

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 100892-001

v

Priority Health

Respondent

Issued and entered
this 22nd day of December 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On October 21, 2008, XXXXX ("Petitioner") filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On October 28, 2008, after an assessment of the material submitted, the Commissioner accepted the request for external review.

Initially this case appeared to involve only contractual issues, so the Commissioner did not assign it to an independent review organization ("IRO") for review by a medical professional. Upon further evaluation, the Commissioner determined the case required a medical review. The case was assigned to an IRO which submitted its analysis and recommendation on November 26, 2008.

II
FACTUAL BACKGROUND

The Petitioner has a history of stenosis and osteoarthritis. As a result, he has chronic pain in the hip and lower extremities. He requested authorization and coverage for evaluation and surgery at the XXXXX in XXXXX. The XXXXX and its physicians do not participate with the

Priority Health network of providers. Priority Health denied coverage. The Petitioner completed Priority Health's internal grievance process and received its final adverse determination letter dated October 15, 2008.

III ISSUE

Did Priority Health properly deny the Petitioner coverage for visits and surgery from non-participating providers?

IV ANALYSIS

Petitioner's Argument

The Petitioner says he has tried many different therapies including medication, physical therapy, and chiropractic care. None have been successful. He has been advised that he needs surgical intervention. Following discussions with his network physician, the Petitioner concluded that laser surgery was his best option. Priority Health denied the request saying that care for Petitioner's condition is available from participating providers.

The Petitioner argues that the operation that he needs is not available in the Priority Health network. He says that laser surgery:

- causes less trauma to the body,
- requires no hospitalization charges as the surgery is performed on an outpatient basis,
- has a total recovery time of 4-6 weeks with no need for continued physical therapy,
- results in a quicker return to work,
- has fewer post-operative complications, and
- is less costly.

The Petitioner believes that Priority Health should provide coverage for the procedure with the non-participating provider because it is medically necessary and will provide him the benefits listed above.

Priority Health's Argument

In its final adverse determination, Priority Health stated that medically appropriate care is

available within its provider network from Dr. XXXXX as well as many other participating specialists. Priority Health believes denial of coverage was appropriate since treatment is available from participating providers under the terms of its certificate of coverage.

Commissioner's Review

The Petitioner's certificate covers surgical services for the treatment of lumbar degenerative disc disease so long as those services are approved in advance. The surgery was not approved because Priority Health believed the Petitioner could be treated adequately by providers in its network. The question to be resolved, then, is whether it is medically necessary for the Petitioner to be treated by a non-network provider. This question was analyzed in the IRO report which was prepared by a physician who is board-certified in neurosurgery. The physician is familiar with the medical management of patients with Petitioner's condition and had access to all the medical records submitted by the Petitioner and Respondent. The IRO physician recommended that Priority Health's denial of coverage be upheld.

The IRO reviewer's report states that, while laser discectomy has been practiced for over two decades,

there are no published studies of blinded, randomized and placebo controlled trials of laser discectomy. . . [W]hile there are case series studies published regarding this procedure, the lack of control groups in these studies limits the ability to interpret these results. . . [A] systemic review of the literature regarding percutaneous endoscopic laser discectomy concluded that the procedure should be regarded as experimental until results from controlled clinical trials are published. (Boult M, et al. Percutaneous laser disc surgery. *Aust NZJ Surg.* 2000 Jul; 70(7): 475-9).

The IRO reviewer indicated laser discectomy remains an experimental/investigational procedure at this time and that it is not medically necessary for the member to receive an evaluation and treatment from an out-of-network facility.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO's analysis is based on extensive experience, expertise, and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case. Therefore, the Commissioner accepts the findings of the IRO that the Petitioner's proposed surgery at the XXXXX is not medically necessary. Priority Health's denial of coverage was consistent with the terms and conditions of the certificate and state law.

**V
ORDER**

Respondent Priority Health's October 15, 2008, final adverse determination is upheld. Priority Health is not required to provide coverage for the out-of-network treatment sought by Petitioner.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

Ken Ross
Commissioner